HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2) (b)

Description of the case

WPMS No. 451 of 2006

Ram Behari Gupta

Vs

Chief Revenue Commissioner Uttaranchal

Approved for reporting

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Not approved for reporting

Dated of decision 6.6.2006

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 451 (MS) OF 2006

1. Ram Behari Gupta,
   S/o Sri Purushottam Sharan,
   R/o 132/2. B.T. Ganj,
   Pargana & Tehsil Roorkee,
   District Haridwar.
2. Subhash Chand,
   S/o Lala Janeshwar Dass,
   R/o 132/2. B.T. Ganj,
   Pargana & Tehsil Roorkee, District Haridwar.

.....Petitioners.

Versus

1. Chief Revenue Commissioner, Uttaranchal, Dehradun.
2. Nagar Palika Parishad, Roorkee, District Haridwar, through its Chairman.
3. Tehsildar Roorkee, District Haridwar.
4. S.D.M. /S.D.O. Roorkee, District Haridwar.
5. Collector, District- Haridwar,
6. Addl. Chief Revenue Commissioner, Uttaranchal, Dehradun. .....Respondents.

Dated: 06.06.2006

Hon'ble Rajesh Tandon, J.

Heard Sri Alok Singh, Sr. Advocate, assisted by Sri D. Barthwal, Advocate for the petitioner, Standing Counsel for

the State and Sri Parikshit Sainin, Advocate for the respondent no. 2.

By the present writ petition, the petitioners have prayed for a writ of certiorari quashing the order dated 13th January, 2006 (Annexure No. 1 to the writ petition).

Briefly stated, the respondent no. 2 filed a suit being Original Suit No. 107 of 1991 Nagar Palika, Roorkee Vs. Ram Bihari Gupta and others seeking relief of cancellation of sale deed dated 30.11.1979 and 11.12.1979. The Suit was dismissed on 28.05.1992 and an appeal was preferred in the Court of District Judge, which was also dismissed. Thereafter a second appeal was preferred being Second Appeal No. 657 of 1994 before the Allahabad High Court, which was subsequently transferred to this Hon'ble Court and re-numbered as Second appeal No. 510 of 2001. The same was dismissed on 27.03.2003. The respondent no. 2 filed S.L.P. (Civil) No. 12729 of 2003 and he got the suit itself withdrawn on 12.09.2005.

Petitioners have submitted that they having been threatened, filed a civil Suit being Suit No. 62 of 1999 Ram Behrai Gupta vs. State and others in the court of Civil Judge (Senior Division), Roorkee along with the application for ad interim injunction. The injunction was granted on 3rd May, 1999. Thereafter a M.C. A. No. 43 of 1999 was filed by the respondents, which was also dismissed on 04.12.2000. Against the grant of ad interim injunction by the trial Court as confirmed by the appellate Court, respondent no.2 preferred a Writ Petition No. 174 (MS) of 2000. Which was also dismissed on 28.03.2001. the S.L.P. preferred was also withdrawn on 03.08.2001.

Petitioners have further submitted that proceedings under Section 33/39 of the U.P. Land Revenue Act was initiated on the application of the respondent no. 2 for deleting the name of the petitioners from the revenue records. On 7th June, 1991, the orders were passed deleting the name of the petitioners. Petitioners have moved an application for recalling

of the said order and the same dismissed on 03.07.1991. Revisions were preferred and that too were dismissed on 13.02.1992 against which Revision No. 79/LR/91-92 was preferred and was subsequently dismissed on 15.03.1995.

Petitioners have preferred a review application, which was transferred to the Additional Chief Revenue Commission, Dehradun. The said review application was pending and a writ petition was moved before this Court and a direction was made for deciding the same expeditiously on 06.10.2005. Along with the writ petition, the petitioner has also moved an application under Section 5 of the Limitation Act annexing certificate of the Doctor, but the said application under Section 5 of the Limitation Act was rejected. Petitioners have mentioned the cause of delay to the following effect:-

''3–यह कि उक्त रिवीजन में दिनांक 13–2–95 को माननीय सदस्य महोदय ने पक्षों की बहस सुनकर जजमेन्ट रिटर्न कर लिया था और आदेप्र हेतु कोई तारीख नियत नहीं की थी।

4– यह कि सुभाष चन्दे हक्त मुकदमें में जजमेन्ट का पता लगाने दिनांक 10–3–95 को लखन{ आये ओर उन्होंने कार्यालय व पेप्रकार से जजमेन्ट को जानना चाहा तो इन्हें बताया गया कि जजमेन्ट अभी नहीं हुआ है। साथ ही यह भी बताया गया कि वक्त बाद में जजमेन्ट होगा तो इसकी सूचना पक्षों या इनके अधिवक्ताओं को नियमानुसार भेजी जायेगी।

5– यह कि अप्रैल 95 के अन्तिम सप्ताह में सुभाष चन्दे के सीधे पैर में एक्सीडेन्ट के कारण फ्रेक्चर हो गया जिसकी वजह से यह 4 माह तक चलने फिरने में असमर्थ रहे। इनके परिवार में उनकी पत्नी व नाबालिग बच्चे ही है।

6–यह कि राम बिहारी गुप्ता व शपथी अपने ठेकेदारी के काराबार के सिलसिले में अधिकतर शहर से बाहर रहतें है।

7–यह कि दिनांक 9–10–95 को नगर पालिका के कर्मचारियों ने विवादित भूमि पर कब्जा करने का प्रयास किया जिस पर विरोध करने पर इन लोगों ने रिव्यू कर्ता को बताया कि रिवीजन बोर्ड से खारिज हो गया है। इस पर रिव्यू कर्ता गणों ने

शपथी को इसके कार्यस्थल से बुलाकर लखन{ जाकर मुकदमें के बारे में पता करने को कहा।

8– यह कि दिनांक 11–10–95 को शपथी ने लखन{ जाकर मुकदमें की जानकारी ली व नकल प्रार्थना पत्र देकर अर्जेन्ट नकल प्राप्त की।''

However, the said application was rejected.

A counter affidavit has been filed by the respondents stating therein that the review application was time barred and as such the same was not maintainable.

Considering the substantial justice between the parties, the review petition should have been decided on merits.

Counsel for the respondents has pointed out that the affidavit in support of the application under Section 5 of the Limitation Act was not proper. In case there was any defect in the application under Section 5 of the Limitation Act, an opportunity should have been given to the petitioner to rectify the same and remove the defects instead of dismissing the application on technical grounds.

The Apex Court has held in ***M.S. Grewal vs. Deep Chand Sood (2001) 8 SCC 151*** as under:

"Law Courts will lose their efficacy if they cannot possibly respond to the need of the society-technicalities there might be many but the justice-oriented approach ought not to be thwarted on the basis of such technicality since technicality cannot and ought not to outweigh the course of justice."

While deciding the application under section 5 of the limitation Act, there should be a liberal approach.

In ***N. Balakrishnan v. M. Krishnamurthy Supreme Court & Full bench Rent Cases, 1998 page 427,*** it has been held that there should be liberal approach in the matter of restoration and also in condoning the delay. The observations of the Apex Court are quoted below:

"Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a lifespan must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined in the maxim interest reipuqlicae up sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

It must be remembered that in every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy, the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time, then the court should lean against acceptance of the explanation. While condoning the delay, the court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quiet large litigation

expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant, the court shall compensate the opposite party for his loss."

In view of the aforesaid, the matter is sent back to the authority concerned for deciding the review petition on merits in accordance with law.

Writ petition is disposed of. No order as to costs.

(Rajesh Tandon, J.)

06.06.2006

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